



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 26399972

Date: MAY 25, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, a nurse, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and an individual of exceptional ability in the sciences, as well as a national interest waiver of the job offer requirement attached to this classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement would be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree.² The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner is a professional nurse with specialized training and more than 10 years of experience in nephrology. She states that her specific area of expertise is in the use of hemodialysis as a treatment for irreversible kidney failure. The Petitioner's proposed endeavor is to work as a trained hemodialysis nurse providing direct patient care to dialysis patients.

With the initial filing the Petitioner submitted evidence of her education and experience, a personal statement describing her professional experience and claimed eligibility for a national interest waiver, and recommendation and support letters. She also submitted industry reports and articles with statistics relevant to chronic kidney disease, the economic value of nursing, and the overall nursing shortage facing the United States.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the national interest waiver. The Petitioner's response to the RFE includes an updated personal statement, a professional plan, and additional recommendation letters. She also provided her nursing licenses for multiple states and evidence of her current employment.

After reviewing the Petitioner's RFE response, the Acting Director concluded that the Petitioner had not demonstrated that her proposed endeavor had national importance, that she is well-positioned to advance her proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Acting Director stated that the record does not demonstrate that the Petitioner's continued work caring for dialysis patients will have a regional or national impact at a level consistent with having national importance, or that her work will have broader implications in the field of medicine. The Acting Director further noted that the record does not demonstrate that the Petitioner published or presented work on hemodialysis treatment or that her work served as an impetus for progress in the medical field. Additionally, the Acting Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of her prospective contributions to the United States, an urgent national interest in her contributions, the potential creation of jobs, or that her self-employment does not adversely affect U.S. workers.

² The record demonstrates that the Petitioner holds the equivalent of a U.S. bachelor's degree in nursing and obstetrics earned in 2004 in Brazil, followed by more than five years of progressive experience in nursing. See 8 C.F.R. § 204.5(k)(3)(i)(B).

On appeal, the Petitioner asserts that the Acting Director incorrectly applied a higher standard of evidence in analyzing her eligibility for a national interest waiver. She further asserts that, as her proposed endeavor is to improve the quality of life of the population undergoing dialysis treatment, and as she has nearly 20 years of experience in the field, she is eligible for a national interest waiver.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Acting Director did not state that the Petitioner's proposed endeavor has substantial merit in the RFE, or in the denial of the petition. As noted above, the record includes information about the economic value of nursing and the importance of dialysis treatment for chronic kidney disease. As the Petitioner has demonstrated that her proposed endeavor is in the field of health and medicine, we conclude that the proposed endeavor here has substantial merit.

The Petitioner proposes to care for patients as a dialysis nurse. In her professional plan, the Petitioner describes the challenges that dialysis treatment centers face in finding professionals with hemodialysis experience and retaining them for continued employment. The Petitioner also describes instances in her career where she was able to improve the quality of patient care and improve care procedures that lead to cost-saving measures. While her endeavor has substantial merit, the record does not establish by a preponderance of the evidence that the Petitioner's patient care would impact the field of nursing or the U.S. healthcare industry more broadly, as opposed to being limited to the specific patients and workplaces she serves.

In order to illustrate the potential impact of her proposed endeavor, the Petitioner pointed to her success in the past and her qualifications as a nurse. We reviewed her statements and the letters of recommendation from her professional acquaintances. The authors of the letters praise the Petitioner's abilities as a student and nurse, and the personal attributes that make her an asset to the workplace and patients she serves. While the recommendation letters evidence the high regard the Petitioner's professional acquaintances have for her and her work, none of the letters offers persuasive detail concerning the impact of the Petitioner's proposed endeavor or how such impact would extend beyond the patients and employers she serves. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*. Furthermore, we note that the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of her proposed work.

The Petitioner contends that her proposed endeavor is nationally important due to the national shortage of nurses trained in hemodialysis. We acknowledge these circumstances and understand how they place the Petitioner's nursing work in high demand. We further acknowledge the Petitioner's arguments that she can improve her patients' quality of life and provide essential mentoring and guidance to future nurses. Nevertheless, the Petitioner must still offer sufficient evidence to address the deficiencies the Director identified concerning the endeavor's benefit to the Petitioner's employer and patients, but not beyond that population. Although the Petitioner asserts that her proposed

endeavor extends beyond her patients to increase the likelihood that they will extend their lives and contribute to the U.S. workforce, she has not provided sufficient evidence to establish how the implications of her proposed endeavor rise to the level of national importance. The Petitioner has not explained, for instance, how many patients she will treat or how treating those patients will have a broader impact on the healthcare field. She has not suggested that her work will resolve the national nursing shortage, nor has she explained what specific impact her work would have on reducing such a shortage. Here, the Petitioner improperly relies upon the impact she makes for her individual workplace and patients, to claim as sufficient to meet the first *Dhanasar* prong.

On appeal, the Petitioner reemphasizes that the field of nursing is nationally important and that a severe nursing shortage exists. While the Petitioner's evidence establishes how her endeavor stands to impact the specific patients and workplaces she serves, the evidence does not persuasively establish how her endeavor will have a broader impact. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework and demonstrate national importance.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

As the Petitioner has not established eligibility under the first *Dhanasar* prong, which is dispositive of the appeal, we decline to reach but hereby reserve remaining arguments concerning eligibility under the second and third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.